STATE OF MICHIGAN

COURT OF APPEALS

LAMOTTE COACH LIGHT CORPORATION, KITCHENER INNES, and LOUANN INNES,	UNPUBLISHED October 14, 2003
Plaintiffs-Appellants,	
v	No. 240907 Sanilac Circuit Court
TOWNSHIP OF LAMOTTE,	LC No. 99-026382-AA
Defendant-Appellee.	

Before: Kelly, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

In this zoning case, plaintiffs appeal as of right from the trial court's judgment of no cause of action. We affirm.

Plaintiffs own an eighty-acre parcel of land zoned for agricultural-residential use and wanted to use it to develop a mobile home park. Although defendant granted plaintiffs' request to change the zoning of their property to a mobile home subdivision or park district, the voters overturned that decision in a referendum. Plaintiffs persisted, however, arguing that the applicable sections of defendant's ordinance in fact allowed mobile home parks within agricultural-residential districts. Alternatively, plaintiffs argued, defendant had totally excluded mobile home parks from its zoning scheme, in violation of constitutional and statutory law, and they were entitled to develop their land for that purpose since there was a need for a mobile home park in the community and their parcel was well suited to that use. The trial court ruled that the ordinance permitted mobile homes, but not mobile home parks, in agricultural-residential districts, and that defendant's recent amendment to its zoning ordinance to establish another parcel as a mobile home subdivision or park district defeated the exclusionary-zoning claim.

On appeal, plaintiffs challenge the court's interpretation of the ordinance, and its decision to recognize defendant's last-minute modification of its zoning scheme.

I. Ordinance Provisions

This Court reviews a lower court's interpretation of the meaning of a municipal ordinance de novo. *Ballman v Borges*, 226 Mich App 166, 168; 572 NW2d 47 (1997). "When the question of law is the construction of an ambiguous ordinance, the constraints of the rules of statutory construction are of foremost importance." *Macenas v Village of Michiana*, 433 Mich

380, 396; 446 NW2d 102 (1989). "To the extent possible, each provision of a statute should be given effect, and each should be read to harmonize with all others." *Michigan Basic Prop Ins Ass'n v Ware*, 230 Mich App 44, 49; 583 NW2d 240 (1998). Ambiguous ordinances should generally be interpreted in favor of the property owner. *Talcott v Midland*, 150 Mich App 143, 147; 387 NW2d 845 (1985).

We conclude that the language in question, if not perfectly clear, nonetheless admits of little ambiguity and cannot be read as plaintiffs urge without straining. See *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995) (legislative meaning "is to be found in the terms and arrangement of the statute without straining or refinement").

The entirety of the provision at issue provides as follows:

> Mobile homes are permitted in Mobile Home Parks. They shall be permitted in Mobile Home Subdivision and Residential-Agricultural Districts, if at a minimum, the conditions recited in 3.020 "Building Restrictions" are met. [Lamotte Zoning Ordinance, § 3.100.]

Plaintiffs interpret the ordinance as permitting mobile home parks in agricultural-residential districts, through the expedient of reading the pronoun "they" as referring to "mobile home parks." Defendant maintains that "they" refers to mobile homes, not mobile home parks. We agree with defendant.

Section 9.000 of the ordinance lists six types of zoning districts, residential, agricultural-residential, agricultural-business, mobile home subdivision ("MHS"), commercial, and industrial. Section 9.400 differentiates between mobile home parks and mobile home subdivisions,[1] while including both under the MHS zoning classification.

If the pronoun "they" refers to "mobile home parks," then the distinction between mobile home parks and mobile home subdivisions is destroyed. Further, the reference to "conditions recited in 3.020," which lists building restrictions, indicates that individual structures are envisioned, not pluralities of lots or sites owned and managed in certain ways. Mechanical application of the often violated convention of having pronouns refer to the nearest preceding antecedent would thus produce a reading that fails to harmonize with other, related, provisions of the ordinance.

For these reasons, the trial court properly rejected plaintiffs' strained attempt to read the ordinance as permitting mobile home parks within agricultural-residential districts.

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[1] Mobile home parks are composed of more than two mobile home sites owned and managed by a licensed lessor, while mobile home subdivisions are composed of individually platted lots sold as private mobile home sites. Lamotte Zoning Ordinance, § 9.400.

II. Exclusionary Zoning

It is undisputed that at the beginning of this litigation, no land within the township was designated as an MHS district. "On its face, an ordinance which *totally* excludes from a municipality a use recognized by the constitution or other laws of this state as legitimate also carries with it a strong taint of unlawful discrimination and a denial of equal protection of the law as to the excluded use." *Kropf v Sterling Heights*, 391 Mich 139, 155-156; 215 NW2d 179 (1974) (emphasis in original). Exclusionary zoning implicates constitutional rights of due process,[2] equal protection,[3] and just compensation for property taken.[4] See *id*. at 156-157.

"[A] zoning ordinance may not totally exclude a land use where (1) there is a demonstrated need for that land use in the township or surrounding area, (2) the use is appropriate for the location, and (3) the use is lawful." *Eveline Twp v H & D Trucking Co*, 181 Mich App 25, 32; 448 NW2d 727 (1989), citing MCL 125.297a.

Over plaintiffs' objection, the trial court adjourned trial of this case in order to allow defendant to amend its zoning ordinance to include a zone for a mobile home park, for the specific purpose of remedying the exclusionary effect of defendant's zoning as it related to mobile home communities. In fact, the trial court itself had suggested that defendant, "prior to the trial of this action, . . . consider whether it could remedy any potential constitutional deficiency in their ordinance by fairly and thoroughly considering all areas of Lamotte Township . . . for a determination as to an appropriate location for a zone for mobile home parks . . . ." Defendant then amended its zoning scheme to allow a mobile home community on a forty-acre parcel that plaintiffs do not own. Plaintiffs moved the trial court to exclude this development from evidence in the case. The court declared that the rezoning was proper, and that it should govern the present controversy. We agree with the trial court's treatment of this issue.

Where a zoning scheme is modified during the course of litigation involving it, the general rule is that the court should apply the law in effect at the time of decision. *MacDonald Advertising Co v McIntyre*, 211 Mich App 406, 410; 536 NW2d 249 (1995). Plaintiffs argue that an established exception, where the ordinance was adopted in bad faith after undue delay, should operate to prevent any defenses predicated on defendant's last-minute action. "[T]he test for determining the existence of bad faith in the adoption of a zoning ordinance [is] 'whether the amendment was enacted for the purpose of manufacturing a defense to plaintiff['s] suit.'" *Id*. at 410-411, quoting *Rodney Lockwood & Co v Southfield*, 93 Mich App 206, 211; 286 NW2d 87 (1979). The rule is framed, however, not as rendering invalid any zoning modification whose timing and effect happen to improve the municipality's position in pending litigation, but as defeating such measures where they are taken for no purpose other than to affect the outcome of litigation. In *MacDonald Advertising*, *supra* at 411, for example, this Court regarded the general

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[2] US Const, Am XIV, § 1; Const 1963, art 1, § 17.

[3] US Const, Am XIV, § 1; Const 1963, art 1, § 2.

[4] US Const, Ams V and XIV, § 1; Const 1963, art 1, § 17, and art 10, § 2.

applicability of the new ordinance as proof of good faith, in that the ordinance thus had "a reach beyond the scope of this litigation."

Plaintiffs do not challenge the trial court's finding that "no witnesses conclusively testified that the property recently rezoned for mobile home park purposes was not suitable for development as a mobile home park." Thus, the recent amendment cannot be regarded as only a token gesture, having no effect other than to thwart plaintiffs in the instant litigation. Further, the trial court itself suggested that defendant seek to cure any constitutional defect resulting from exclusionary zoning by identifying a suitable zone for a mobile home park, and the evidence indicates that the location eventually approved for such use had long been identified by municipal planners as a candidate for such treatment. Also militating against the suggestion that defendant acted in bad faith is that the modification of the zoning scheme does not change the status of plaintiffs' own parcel.

Further, it would be peculiar indeed if it were the rule that whenever a municipality has improperly excluded a certain land use, the first litigant to make issue of that exclusion may put that use into practice anywhere in the municipality, regardless of the municipality's correction of its error. A zoning adjustment may simultaneously be responsive to pending litigation *and* in good faith. In this case, defendant succeeded in allowing a permissible land use within its boundaries while respecting its voters' decision not to allow it on plaintiffs' parcel.

For these reasons, the trial court did not abuse its discretion in allowing into evidence the recent revision of defendant's zoning ordinance, and in deciding this case on that basis.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot